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C O N F I D E N T I A L SECTION 01 OF 05 SANAA 003010

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PM FOR AMBASSADOR BODINE; USTR FOR BUNTIN

E.O. 12958: DECL: 12/18/2013

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SUBJECT: PM SENIOR ADVISOR BODINE'S 12/18 MEETING WITH FM

QIRBI: EXCHANGE OF ARTICLE DIPNOTES COMPLETED; CT

COOPERATION, SMALL ARMS PROGRAM AND MARITIME SECURITY;

U.S.-YEMEN TIFA; LAWYER FOR GTMO DETAINEE

REF: A. SANAA 2993

[1](#)B. SANAA 2800

Classified By: Ambassador Edmund J. Hull, for reasons 1.5 (b and d)

[1](#)1. (C) Summary: During a 12/18/03 call on Foreign Minister Qirbi, PM Senior Advisor Bodine and Qirbi exchanged signed diplomatic notes to complete an Article 98 agreement, (ROYG has asked that this not/not be publicized, however.) Without setting a precise date, Qirbi responded positively to the Secretary's offer to meet during February 4-6, 2004, and

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supported completion of a U.S.-Yemen TIFA and 416(b) agreement for dry milk by that time. Efforts to control small arms smuggling to Yemen and within its borders were also discussed, and Ambassador Bodine offered U.S. diplomatic support with other countries in coordination with Yemen's revised procedures and review of outstanding end-user certificates. Qirbi explained the new Yemen-Oman maritime agreement, and asked for more assistance on border and maritime security. He noted that President Saleh's concerns about the EXBS team's December visit would likely be alleviated when the program produces tangible results, i.e., training and equipment. Qirbi responded matter-of-factly to the Ambassador's briefing on the appointment of military counsel for a Yemeni Guantanamo detainee, but seemed unaware of rumors of a European businessman's stabbing near Tahrir Square (ref a) and promised follow-up with ROYG security offices. Ambassador Bodine's 12/17 meeting with President Saleh is reported septel. End summary.

[1](#)2. (C) PM Senior Advisor Ambassador Barbara Bodine, accompanied by Ambassador, DCM and Pol/Econ Chief (notetaker) called on FM Abubakr al-Qirbi on 12/18/03 at his office. Qirbi also hosted a lunch in honor of Ambassador Bodine later in the day.

ARTICLE 98: EXCHANGE OF DIPLOMATIC NOTES COMPLETED

[1](#)3. (SBU) FM Qirbi accepted the Secretary's signed December 10, 2003, note on an Article 98 agreement hand-carried from Washington by Ambassador Bodine. Qirbi signed and provided Ambassador Bodine with the ROYG's response note, in both English and Arabic, dated December 18, 2003. Ambassador Bodine has hand-carried the ROYG notes to Washington. The text of the ROYG's Article 98 note, which reiterates and agrees to the provisions in the note signed by the Secretary, is below in paragraph 16. No ceremony accompanied the exchange, and Qirbi specifically requested that the agreement not/not be publicized.

OFFER OF FEBRUARY MEETING WITH THE SECRETARY: SIGNING TRADE AND INVESTMENT FRAMEWORK AGREEMENT (TIFA) AND 416(B) ARRANGEMENT POSSIBLE

[1](#)4. (C) After the exchange, Ambassador Bodine gave Qirbi the Secretary's December 10 letter to express thanks for the

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ROYG's "expeditions approval of the text" of the Article 98 agreement and to extend an invitation to the Foreign Minister to come to Washington for a meeting between February 4-6, 2004, to "discuss broader issues of bilateral cooperation." Qirbi responded positively, and undertook to get back to the Embassy shortly with proposed precise dates. The Ambassador said that he would try to be in Washington at the same time as the FM.

[1](#)5. (C) Noting that a Trade and Investment Framework Agreement (TIFA) is a first step toward a Free Trade Agreement (FTA), the Ambassador suggested that it might be possible to complete the negotiations and have the TIFA ready for signature during the proposed February visit. Qirbi again responded positively, commenting that while a TIFA for Yemen has more of a psychological impact than concrete long-term benefits, it is still important.

[1](#)6. (C) The Ambassador also briefed Qirbi on the status of the 416(b) program, noting that work with Yemen's prominent business families has resulted in progress toward an agreed

price for dry milk that would extend the program for about two years. The Ambassador gave credit to USDA)- &a hero in U.S.-Yemen relations8)- and suggested that if the timing worked out the agreement could also be signed in February. Qirbi responded with a few questions and agreed to consider the possibility.

QIRBI: CONTROLLING SMALL ARMS THROUGH END-USER CERTIFICATES AND LICENSING

17. (C) Ambassador Bodine raised the issue of controlling the flow of small arms to and through Yemen. Commenting favorably on the ROYG,s decision to vet all end-user certificates through its embassies abroad, she suggested that the U.S. could be helpful with diplomatic support with key producing/exporting countries. Qirbi explained that the ROYG decision is to negate all end-user licenses, and that the plan is to continue to pressure traders of small arms to and within Yemen. He said, secondly, that there is a law in Parliament that would enforce the government policy on carrying arms within the country. (Note: Presumably a reference to the gun licensing law that was tabled by Parliament during 2002, and also in 1999/2000, and reintroduced after the April 2003 elections, which shows no sign of movement towards passage. End note.) Qirbi said a third goal is to slow the smuggling of arms from Yemen to the Horn of Africa, particularly Somalia (ref b). He mentioned, however, that the French Embassy had notified him that they stopped a small boat carrying arms in the reverse direction, from Somalia to Yemen.

18. (C) Ambassador Bodine remarked that the ROYG has made excellent progress on the Yemen Coast Guard. The EDA boats (expected in January 2004) would help the government's efforts. The Ambassador said that he is getting reports that the Yemeni students in coast guard training in the U.S. are finishing at the top of their classes. Qirbi proudly noted that three of the top ten graduates from the police academy in Dubai are Yemeni, and that this demonstrates not superior academic ability, but a good selection process. Ambassador Bodine agreed that this reflects positively on Yemen,s reputation for selecting candidates for student slots, and, after their graduation, utilizing them effectively. This reputation facilitated the embassy's efforts to secure training slots for Yemenis elsewhere in our cooperation programs.

QIRBI ON THE NEED FOR MORE BORDER/MARITIME SUPPORT AND SALEH'S REACTION TO THE EXBS VISIT

19. (C) Qirbi said that he has complained to the Europeans that the U.S. does not provide adequate resources for border/maritime security. He said that the Italians are giving \$22 million dollars for radar from Aden to Shuqrah, 80 miles to Aden's east. The Ambassador requested that Captain Innes, U.S. Maritime Advisor to Yemen, be informed about the radar, which he noted seemed excessively expensive for its reported coverage. Ambassador Bodine commented that the Yemen Coast Guard (YCG) should not be viewed as solely a U.S. project and that other donors should be encouraged to provide expertise and equipment. Both the U.S. and the ROYG would benefit from a broader base of support to the YCG. The Ambassador suggested that when the YCG gets the EDA boats operational (7 to 10 days after arrival this January) the ROYG should invite all potential donors to a ceremony to promote support for the YCG.

110. (C) The Ambassador raised the issue of President Saleh's reaction to the Export and Border Security (EXBS) 4-person team's visit to Haradh (septel). After explaining the background on the trip, including Deputy Foreign Minister Ambassador al-Dhabi's involvement in the planning, the Ambassador noted that the team is now back in Washington to battle for equipment and training to help Yemen improve its border controls. He commented that Saleh misperceived the team's activities as "spying." The Ambassador said that if the ROYG decides that EXBS is not an appropriate program for Yemen, we will not force the issue, but we need to see what Washington proposes first. Qirbi responded that the support provided by the program will demonstrate its intentions.

NEUTRAL RESPONSE ON YEMENI GUANTANAMO DETAINEE ASSIGNED MILITARY DEFENSE COUNSEL

111. (C) The Ambassador briefed Qirbi on the pending press announcement that the Department of Defense assigned a military defense counsel to Salim Ahmed Hamdan, a Yemeni citizen detained at Guantanamo. He explained that although Hamdan has not been charged, President Bush has determined that his case is subject to President Bush's Military Order of November 13, 2001. He further noted that Hamdan was assigned counsel in order to prepare a defense, that he is presumed innocent until proven guilty, the standard of proof is beyond a reasonable doubt and that Hamdan has the right to remain silent, to present evidence and call witnesses. Qirbi responded in a matter-of-fact manner and asked a few

questions to make sure that this information did not pertain to pending releases of detainees. The Ambassador clarified that post has no information that any Yemeni has been designated for release or transfer. Qirbi claimed that Yemen's Ambassador to the United States, Abdulwahab al-Hajri, attended White House and FBI meetings and was informed that Yemenis were among those to be released. At the Ambassador's request, Qirbi said he would try to confirm the source of this information from Ambassador al-Hajri.

RUMORS OF EUROPEAN STABBINGS IN SANA'A RAISE CONCERN

¶12. (C) The Ambassador asked Qirbi about rumors that a German businessman had been stabbed, without apparent political motive, in the stomach while walking from the Taj Sheba Hotel to Tahrir Square in downtown Sana'a. He noted that there are multiple stories that might be echoes of the first, but seemed to point to incidents involving different European nationalities. (Note: Post has now determined that there were three separate incidents, all involving blonde Europeans, and issued appropriate warden messages. Post's December 20 EAC meeting minutes are reported in refel a. End note.) Qirbi, who had only returned to Yemen early that morning, was surprised at the information, and promised to follow up with ROYG security offices.

U.S. CONCERNS WITH YEMEN'S DEMOCRACY/HUMAN RIGHTS/ICC CONFERENCE

¶13. (C) Qirbi was keen to determine the level of U.S. support for the Conference on Democracy and Human Rights, including the International Criminal Court, Yemen will co-host with the EU in mid-January. The Ambassador noted that the National Democratic Institute (NDI) Director, Robin Madrid, would be back in country and that he planned to work with NDI to determine practical, positive U.S. involvement. He noted that, to produce constructive results, the EU should, for example, provide resources for the national registry project. Qirbi remarked that he is aware that the U.S. has concerns with the ICC component of the conference, but sought to assure the Ambassador and the U.S. that he intends to focus on empowerment in human rights and democracy. He further stated that the Sana'a Declaration following the Conference will "not subject anyone to intimidation" and that reviewing the proposal for the conference should alleviate U.S. worries on ICC. The Ambassador responded that there is still the issue of practical outcomes from the conference, to which the FM retorted "that is why we want you to speak."

YEMEN-OMAN COOPERATION ON MARITIME SECURITY

¶14. (C) Ambassador Bodine noted that Qirbi had inaugurated the new Yemeni Embassy building in Muscat and signed an agreement with Oman the week before. The FM said that the Oman-Yemen agreement on maritime borders established new protocols, particularly on the pursuit of pirate ships, and that it addresses the important issues of terrorism and fishing. He agreed with the Ambassador's suggestion that that Yemen's hosting of the Spring NESAC conference on maritime security might provide an opportunity for Omani participation.

QIRBI MESSAGE TO WASHINGTON: YEMEN WANTS MORE DEVELOPMENT AID, U.S. INVESTMENT AND COOPERATION ON TERRORISM

¶15. (C) In response to Ambassador Bodine's offer to relay messages to Washington, Qirbi outlined three key requests: (1) more development aid; (2) increased investment by U.S. companies; and (3) more cooperation on terrorism, including increased transparency. In addition to a general request for more aid, Qirbi said the ROYG just terminated the previous contract on the Aden port and is working with the World Bank to develop plans for the port's management. He outlined a basic plan to have a private investor/company manage the port, the container terminal and the Aden airport. He cited interest from Hong Kong and British companies and encouraged the U.S. to consider the opportunity. In the context of increased CT cooperation and transparency, Qirbi urged more information exchanges and said people dealing with Yemen need to better understand the culture and the Yemeni mindset.

¶16. (C) Ambassador Bodine stated that the change in port management was a positive change and that initiatives such as the TIFA would help address the Yemeni request for greater investment. On development and other cooperation, she noted that the increase in assistance and cooperation over the past two and a half years was remarkable and exemplified our understanding of Yemen's needs.

¶17. (U) This cable was cleared by Ambassador Bodine.
TEXT OF ARTICLE 98 AGREEMENT

¶18. (U) Begin text of the ROYG's Diplomatic Note on Article 98:

(On Republic of Yemen, Ministry of Foreign Affairs Letterhead)

Sana'a, December 18, 2003

His Excellency
Colin L. Powell
Secretary of State

SIPDIS
Of the United States of America
Washington D.C.

Excellency:

I have the honor to acknowledge receipt of Your Excellency's note dated December 10, 2003 which reads as follows:

&Excellency:

I have the honor to refer to recent discussions between representatives of the Government of the United States of America and the Government of the Republic of Yemen regarding the surrender of persons to International Tribunals.

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Considering that the Government of the United States of America and the Government of the Republic of Yemen have each expressed their intention to, where appropriate, investigate and prosecute war crimes, crimes against humanity, and genocide alleged to have been committed by their respective officials, employees, military personnel, and nationals,

I have the honor to propose the following arrangement:

1. For the purposes of this arrangement, &persons8 of either Party include all nationals of that Party and, for the Government of the United States of America, also include current and former non-U.S. national U.S. military personnel with respect to acts or omissions allegedly committed or occurring while they are or were U.S. military personnel.

2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,

(a) be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal has been established by the United Nations Security Council, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to any international tribunal, unless such tribunal has been established by the United Nations Security Council.

3. When the Government of the United States of America extradites, surrenders, or otherwise transfers a person of Yemen to a third country, the Government of the United States of America will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established by the United Nations Security Council, absent the express consent of the Government of the Republic of Yemen.

4. When the Government of the Republic of Yemen extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of Yemen will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established by the United Nations Security Council, absent the express consent of the Government of the United States of America.

5. This arrangement shall remain in force until one year after the date on which one Party notifies the other of its intent to terminate the arrangement. The provisions of this arrangement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

If the proposal set forth herein is acceptable to Government of the Republic of Yemen, this note and Your Excellency's affirmative note in reply shall constitute binding obligations under international law between our two Governments which shall be effective on the date of Your note.

Accept, Excellency, the renewed assurances of my highest consideration.⁸

I have the honor to confirm that the proposal set forth in Your note is acceptable to (the) Government of the Republic of Yemen, and that Your note and this note shall constitute binding obligations under international law between our two Governments which shall be effective on the date of this note.

Accept, Excellency, the assurances of my highest
consideration.

/s/ Abubakr Abdullah

Alqirbi

End text of the ROYG's Diplomatic Note on Article 98.
HULL